

**Stanford Hospital and Clinics and Service Employees
International Union, Local 715, AFL-CIO,
CLC.** Case 32-CA-20138-1

April 28, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Board's unit determination in the underlying representation proceeding. The Board in that proceeding clarified the bargaining unit to include housekeeping employees at Respondent's Center for Clinical Science Research (also called the Cancer Center).

Pursuant to a charge and an amended charge filed on November 4 and 7, 2001, respectively, the General Counsel issued the complaint in this proceeding on January 17, 2003. The complaint alleges that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Board's September 4, 2002 Order affirming the Regional Director's Decision and Order clarifying the bargaining unit in Case 32-UC-375. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On February 20, 2003, the General Counsel filed a Motion for Summary Judgment. On February 24, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent in its answer admits its refusal to bargain and to furnish information, but asserts that the decision and order clarifying the bargaining unit in the underlying representation proceeding was inappropriate and contrary to law.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that, with one exception indicated below, the Respondent's answer does not raise any issues warranting a hearing with respect to the Union's information request. On about September 11 and 25, 2002, the Union requested the following information "for the housekeeping employees working in the Cancer Center":

- (1) A list with name, shift, classification, hours status (i.e. regular full time, part time or relief), pay rate, date of hire, home address and phone number, and work status (i.e. active, on leave, on disability etc.).
- (2) The number of employees enrolled in each health insurance plan including how they are enrolled, i.e. employee only, employee plus child(ren), employee plus spouse, employee plus family.
- (3) The number of temporary employees working in housekeeping in the Cancer Center, if any. As well as the name of the agency, the length of time the temporary employee has been in the assignment and the reason for the assignment (i.e. to cover for an employee on leave, or to back fill a vacancy).

Although the Respondent's answer admits that the Respondent refused to provide this information, it denies that the information is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative of the Cancer Center employees in the clarified unit. However, it is well established that, except for the information requested in paragraph 3 concerning nonunit temporary employees,¹ the requested

¹ The General Counsel's motion implicitly acknowledges that the temporary employees referred to in par. 3 of the Union's information request may not be bargaining-unit employees, since the motion asserts that the information about those employees would aid the Union in "its ability to protect [the Cancer Center housekeeping employees'] bargaining unit work from being eroded." Accordingly, because the requested information may concern nonunit employees, it may not be presumptively relevant and the Union may have to demonstrate the relevance of the information. See generally *Excel Rehabilitation & Health Center*, 336 NLRB No. 10, slip op. at 1 fn. 1 (2001) (not reported in Board volumes). Here, the Union did not specify in its request why it wanted the information regarding temporary employees and the pleadings fail to otherwise establish that the Union demonstrated the relevance of the information or that the relevance of the information would have been apparent to the Respondent from the circumstances. Accordingly, we cannot conclude on the pleadings that the Respondent was obligated to provide this information to the Union. We therefore deny summary judgment with respect to the Respondent's failure to do so, and remand that issue to the Regional Director for further appropriate action. See id.; see also *Cheboygan Health Care Center*, 338 NLRB 815, 816 fn. 2 (2003). However, this does not excuse the Respondent's failure to provide the other information re-

employment information is presumptively relevant for the purposes of collective bargaining and must be furnished on request. See *Producer's Dairy Foods, Inc.*, 338 NLRB No. 131 (2003) (not reported in Board volumes); *Baker Concrete Construction, Inc.*, 338 NLRB No. 48 (2002) (not reported in Board volumes), and cases cited therein. The Respondent has not asserted any basis to rebut the relevance of the information, apart from its contention, rejected above, that the unit clarification was invalid.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the information requested by the Union, except for the information requested in paragraph 3 regarding temporary employees.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a California corporation, with an office and place of business in Palo Alto, California, has been engaged in the operation of an acute-care hospital and medical clinics providing inpatient and outpatient medical care. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000, and purchased and received goods in excess of \$5000 that originated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Bargaining Unit

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, part-time, and relief non-professional employees performing service and patient care func-

tions employed at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations in positions or classifications listed as included in Appendix A of Respondent and the Union's December 19, 2002 through November 4, 2005 collective bargaining agreement (herein called the Agreement); excluding employees employed in those positions or classifications listed as excluded in Appendix A of the Agreement, employees represented by any other labor organization, managerial, supervisory or confidential employees within the meaning of the Act, and all other employees.

Since early 2000, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in the agreement. At all times since early 2000, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive bargaining representative of the employees in the unit.

On September 4, 2002, the Board affirmed the Regional Director's Decision and Order clarifying the unit to specifically include "all full-time, regular part-time, and relief employees in the classifications of Senior Housekeeping Assistant, Senior Housekeeping Specialist, Housekeeping Aide, Housekeeping Assistant, Housekeeping Specialist and/or Lead Housekeeping Assistant assigned to the Center for Clinical Science Research" (the Cancer Center housekeeping employees). Since the same date, the unit, as clarified to include the Cancer Center housekeeping employees, has constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

B. The Refusal to Bargain

On about September 11, 2002, the Union requested the Respondent to recognize and bargain with it as the exclusive bargaining representative of the Cancer Center housekeeping employees in the clarified unit. In addition, on about September 11 and 25, 2002, the Union requested the Respondent to furnish information necessary and relevant to the Union's duties as the exclusive bargaining representative of the Cancer Center housekeeping employees. Since September 11, 2002, the Respondent has refused the Union's requests to bargain and to furnish information. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

quested by the Union, which pertained to the housekeeping employees that were accreted to the unit and clearly is presumptively relevant. See *id.*

² Chairman Battista and Member Walsh did not participate in the Board's September 4, 2002 Order affirming the Regional Director's Decision and Order clarifying the unit. However, they agree that the Respondent has not raised any new matters or exceptional circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is appropriate.

CONCLUSION OF LAW

By refusing on and after September 11, 2002, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Cancer Center housekeeping employees in the clarified unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, and to bargain on request with the Union as the exclusive bargaining representative of the Cancer Center housekeeping employees in the clarified unit. We also shall order the Respondent to furnish the Union the information it requested, except for the requested information about temporary employees.

ORDER

The National Labor Relations Board orders that the Respondent, Stanford Hospital and Clinics, Palo Alto and Stanford, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 715, AFL-CIO, CLC, as the exclusive bargaining representative of the Cancer Center housekeeping employees who were included in the bargaining unit set forth below pursuant to the decision and order clarifying the unit in Case 32-UC-375, and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of those employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive bargaining representative of the Cancer Center housekeeping employees who were included in the following appropriate unit pursuant to the decision and order clarifying the unit in Case 32-UC-375:

All full-time, part-time, and relief non-professional employees performing service and patient care functions employed at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations in positions or classifications listed as included in Appendix A of Respondent and the Union's December 19, 2002 through November 4, 2005

collective bargaining agreement (herein called the Agreement); excluding employees employed in those positions or classifications listed as excluded in Appendix A of the Agreement, employees represented by any other labor organization, managerial, supervisory or confidential employees within the meaning of the Act, and all other employees.

(b) Furnish the Union the information it requested on September 11 and 25, 2002, except for the requested information about temporary employees.

(c) Within 14 days after service by the Region, post at its facilities in Palo Alto and Stanford, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 32 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 11, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 715, AFL-CIO, CLC as the exclusive bargaining representative of the Cancer Center housekeeping employees who were included in the bargaining unit set forth below pursuant to the decision and order clarifying the unit in Case 32-UC-375, and WE WILL NOT refuse to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of those employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union as the exclusive bargaining representative of the Cancer Center housekeeping employees who were included in the following appropriate unit pursuant to the

decision and order clarifying the unit in Case 32-UC-375:

All full-time, part-time, and relief non-professional employees performing service and patient care functions employed at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations in positions or classifications listed as included in Appendix A of Stanford Hospital and the Union's December 19, 2002 through November 4, 2005 collective bargaining agreement (herein called the Agreement); excluding employees employed in those positions or classifications listed as excluded in Appendix A of the Agreement, employees represented by any other labor organization, managerial, supervisory or confidential employees within the meaning of the Act, and all other employees.

WE WILL furnish the Union the information it requested on September 11 and 25, 2002, except for the requested information about temporary employees.

STANFORD HOSPITAL AND CLINICS